



Peter Shane and Alexander Domrin

Peter Shane and Alexander Domrin The Ohio State University



"Emergency Powers in Russia and the United States: A Comparative Discussion"

Friday, April 14, 2006
12 p.m.
Mershon Center
Room 120



This lecture is open to the public. Lunch will be served to invited students and faculty who RSVP to [Beth Russell](#) no later than Wednesday, April 12, 2006.

Peter M. Shane is the Joseph S. Platt/Porter, Wright, Morris & Arthur Professor of Law at The Ohio State University's Moritz College of Law. He is also the Distinguished Service Professor (adjunct) of Law and Public Policy at Carnegie Mellon University's H.J. Heinz III School of Law and Public Policy, where he chairs the board of advisors of the Institute for the Study of Information Technology and Society, which he helped found in 2001.

Change, the magazine of the American Association for Higher Education, cited Shane in 1998 for his leadership in academic institution building. His academic work is concentrated in U.S. constitutional and administrative law, with a special focus on the separation of powers and "electronic democracy," the use of new information technologies to enhance political engagement.

Alexander Domrin's research focuses on Russian and Soviet law, international law, and EU law. He is a Senior Research Fellow at the Institute of Legislation and Comparative Law in Moscow, a research and legislation-drafting division of the Russian federal government. He is also a member of the Expert Council on Constitutional Legislation under the Chairman of the State Duma, the lower chamber of Russia's parliament.

Domrin is the author of more than 60 publications, including *The Constitutional Mechanism of a State of Emergency*, *Constitutional Law of the Countries of Europe*, and *The Limits of Russian Democratization* (forthcoming), as well as two major reports to the Council for Foreign and Defense Policy.

Domrin has taught at several American universities, including the University of Iowa, New York University, Cornell, University of Pennsylvania, and Villanova, in addition to being a Fulbright Research Scholar at Harvard Law School. He is a graduate of the Institute of International Relations (MGIMO) under the USSR Ministry of Foreign Affairs (1985).

During national emergencies, it is common for governments to take or be granted special powers. However, the extent of these powers can be quite different depending on the country, and can be a point of controversy. For example, United States has seen much debate recently about the extent of the president's powers during national emergencies, primarily because of the powers that President Bush claimed in the aftermath of the Sept. 11 terrorist attacks.

Peter Shane and Alexander Domrin compared the use of emergency powers and controversy surrounding them in the United States and Russia. Shane began by detailing the legal consensus on the basis and extent of presidential powers. Although the Constitution barely mentions emergency powers, Shane explained, this is not a problem because Congress can

give emergency power to the president through legislative action. Indeed, Congress has provided the president with a number of well known and uncontroversial powers this way.

What is much more controversial is the extent of the president's powers in situations that are not covered by statutes. In some of these situations, Shane explained, the president is thought to have special but very limited powers. For example, it is generally agreed that during a domestic emergency the president has the power to take any actions that do not affect the rights or liberties of U.S. citizens or permanent residents.

Alexander Domrin considered the issue of emergency powers from a Russian perspective. Very little has been written about this topic in Russia during the past century, he said, because for most of that time the Communist Party was in power. The Communist Party's power was not limited in any way, and so during a national emergency there were no restrictions on what the Communist Party could do.

Since the collapse of Communism in Russia, Domrin said, legislation has been created to limit presidential powers during national emergencies. However, that legislation has not always been followed. A well known example of this occurred in 1993, when President Boris Yeltsin tried to dissolve the Russian parliament. This power had not been granted to him under the Russian constitution, and so parliament refused to be dissolved. In response, Yeltsin attacked the parliament building with tanks. The Russian constitutional court decided that Yeltsin's actions constituted a coup, which meant that his presidency was terminated. Yeltsin reacted to this by shutting down the constitutional court for almost two years.

Of course, Russia is not the only country in which limits to emergency powers have been abused or ignored. Domrin claimed that all major Western powers have experienced this at some point. Peter Shane spoke to the most flagrant abuse of emergency powers in the United States: the incarceration of Japanese-Americans during World War II. Shane argued that in order to justify this action, U.S. government officials had to misrepresent the situation, conceal information, and support claims they knew to be false.